Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	MB Docket No. 07-294
Promoting Diversification of Ownership	)	
In the Broadcasting Services		

COMMENTS OF MEMBERS OF THE musicFIRST COALITION

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Thank you for the opportunity to comment on the important questions raised in the Commission's NPRM, published on January 19, 2012 in the Federal Register, regarding the Congressionally-mandated Quadrennial Regulatory Review of the Commission's broadcast ownership rules. As Members of the musicFIRST Coalition, founded by a broad spectrum of organizations representing musicians, recording artists, managers, music businesses and performance right advocates, we have a profound interest in improved competition, localism and diversity in media, and in local broadcast radio in particular.

At the outset, we note that broadcast radio is a public asset, not private property. As such, the public expects that broadcast stations, which pay nothing for use of the publicly owned airwaves, serve the public interest. This expectation, which dates back to the creation of the Federal Communications Commission itself in 1934, is still the critical yardstick the Commission should use to measure consolidation in the broadcast industry. The FCC has long held that diversity, competition and localism in broadcasting are vital to the public interest.

Harm to Artists Caused by Broadcast Radio Consolidation

In its NPRM, the Commission seeks comment on whether to change numerical ownership limits for local radio.[1] These ownership limits should certainly not be weakened. In fact, it is our firm view that the FCC should tighten these ownership limits to reverse the rampant homogenization and impoverishment of radio programming in recent decades and to restore radio's public interest service.

As you know, until 1996, the Federal Communications Commission regulated ownership of broadcast stations so any company could own no more than two radio stations in any one market and no more than 40 nationwide. When Congress passed the Telecommunications Act of 1996, the restrictions governing ownership of radio stations evaporated on a national basis, and the restrictions on the number of radio stations that could be owned by one entity in a single market were dramatically loosened. Now, powerful national radio groups own numerous stations around the country and exercise unreasonable control over the airwaves. For example, one entity – Clear Channel – currently operates more than 850 radio stations, reaching more than 110 million listeners every week.[2] Now merged with Citadel, Cumulus Broadcasting owns 570 stations in 120 U.S. cities and distributed network programming to 4,500 affiliates nationwide.[3]

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[1] See NPRM, 473 CFR Part 73, January 19, 2012, paragraphs 72 – 82.
[2] Investor FAQ at http://www.clearchannel.com/Investors/PressRelease.aspx?PressReleaseID=1176&p=hidden (Retrieved February 27, 2012).
[3] Press Release, "Cumulus Media Inc. Announces Fourth Quarter 2011 Earnings Conference Call," at http://www.cumulus.com/investors.aspx (Retrieved February 27, 2012).

With the consolidation of radio programming in so few hands,[4] playlist selection has narrowed to an alarmingly short list of hits in a shrinking number of genres. The playlist has become a national rather than a local playlist. Today, one can drive from New York City to Detroit to Los Angeles, all cities with vibrant and unique local music scenes, and listen to the same "songs that rock."

The issue of homogenized nationwide playlists has been substantially aired before the Commission.[5] Yet despite Commission consent decrees with the nation's four largest broadcasters mandating more airplay of artists on independent record labels,[6] radio stations have not measurably diversified their playlists – the radio landscape remains a wasteland of homogeneity.[7] We vehemently object to any further loosening of the current numerical limits on the number of radio stations that can be owned by one entity in a given market - including the largest markets - and we believe that the public interest in competition, diversity and localism would best be served by *decreasing* the number of radio stations that one entity can own in any given market.

For creators and distributors of recorded music, radio consolidation has created bottlenecks that block new artists from reaching radio listeners. The National Association of Broadcasters consistently argues that radio provides a promotional value for artists – one of the top reasons it cites for denying artists the performance

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[4] See Comments of Rachel Stilwell, Which Public, Whose Interest? How The FCC's Deregulation of Radio Station Ownership Has Harmed The Public Interest, And How We Can Escape From The Swamp," (2006), available at http://apps.fcc.gov/ecfs//document/view.action?id=6518441015, also published in the Loyola of Los Angeles Entertainment Law Review, 26 Loy. L.A. Ent. L. Rev. 369, 371 (2006).

[5] See *In re 2010 Quadrennial Regulatory Review*, 2011 FCC LEXIS 5261 n. 146 (F.C.C. Dec. 22, 2011) ("Future of Music Coalition ("FMC") argues that consolidation in the radio industry 'has no demonstrable public benefit' and that '[r]adio programming from the largest station groups remains focused on just a few formats -- many of which overlap with each other, creating further homogenization.'"). See also *Remarks of Former Commissioner Jonathan S. Adelstein*
Public Interest, Public Airwaves Coalition. Public Interest Obligations in the 21st Century: Where Do We Go from Here? A Look at the Federal Communications Commission's New Broadcast Disclosure Rules and the Issues Raised in the FCC's Localism Proceeding: "…[W]e have heard across the country that homogenized playlists and payola are shutting out local musicians, and unmanned radio stations have replaced local DJs." 2008 FCC LEXIS 1835 (March 3, 2008).

[6] See *In re The Matter of Clear Channel Communications*, Inc., et al., 22 FCC Rcd 7875; 2007 FCC LEXIS 2932; 40 Comm. Reg. (P & F) 1417 (FCC April 13, 2007 Released; Adopted March 21, 2007).

[7] See "Same Old Song: An Analysis of Radio Playlists in a Post-FCC Consent Decree World," Kristen Thomson, April 2009, available at http://futureofmusic.org/article/research/same-old-song

royalties they receive from every other medium and in nearly every other country. But if radio is playing lists filled exclusively with established hits, what is the value of its "promotion?"

Harm to Performance Right

Radio consolidation has also allowed the giant conglomerates to cheat the musicians that do get radio play. As you are aware, a unique special interest loophole has long allowed terrestrial broadcasters to avoid paying recording artists for the use of their work. By contrast, every other radio configuration – including satellite radio and Internet radio – is required to pay performers when their songs are played. The result of this bizarre arrangement is to allow terrestrial radio to make billions of dollars from the sale of advertisements on music-formatted radio stations without paying the recording artists who draw listeners to the radio station in the first place.[8]

In the 111th Congress, legislation was introduced and moved that would have closed this loophole. As a result of this legislative activity, the musicFirst Coalition negotiated with the National Association of Broadcasters ("NAB") to seek a resolution to this injustice. We reached an agreement that in essence would have given artists a performance right for terrestrial broadcasts in exchange for reducing royalties paid for digital broadcasts. But after meetings with its board, the NAB reneged on this deal and presented a new take-it-or-leave-it offer to musicFIRST that ignored key elements of the negotiated compromise. As a result of the NAB's intransigence, there has been no resolution to this issue.

We are advised that the very largest companies – the beneficiaries of radio consolidation – vetoed the NAB's agreement with musicFIRST. In a more competitive market, we could have pursued the original NAB compromise with individual stations or smaller groups of stations. However, thanks to the highly consolidated environment with respect to local terrestrial radio, we are subject to the whims of these radio conglomerates, and we must continue to pursue our objectives with respect to fair payment for content through the legislative process.

The NAB Changes Its Tune Unfairly and Inaccurately When Defining Competition

The NAB has long argued that the "scarcity doctrine" (long recognized by the Supreme Court and FCC as applicable to terrestrial radio) no longer applies to

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[8] *See, e.g.,* Ryan Nakashima, "Pittman takes over CEO reins at Clear Channel," Associated Press, October 2, 2011 (In Q2 of 2011, Clear Channel "cut its net loss by 90 percent to $13.3 million in **$1.6 billion in revenue**…" and that such losses were related to interest on $20 billion in debt acquired when Clear Channel was taken private in 2008) (Emphasis added).

broadcast radio because they compete with other media outlets including pureplay webcasters, satellite radio, cable radio, YouTube, and others. Therefore, they argue, the rationale for the current ownership caps no longer exists.

But the NAB has previously argued the opposite. In petitioning the Commission to deny the XM/Sirius Merger, the NAB argued that the merger of the two satellite companies would create a "monopoly" in the "national satellite … market,"[9] implying that broadcasters could not possibly be considered competitors to satellite radio.

If, as the NAB argued, satellite radio does not compete with terrestrial radio, then broadcasters cannot cite satellite competition as an argument against ownership caps. On the other hand, if they are competitors, shouldn't NAB members be subject to the same requirements as their "competition," including compensating music creators when songs are played through a performance right?

Consolidation Has Broken Radio in America

Thanks to widespread consolidation among broadcasters that push narrow, safe, national playlists, radio in America provides no appreciable benefit to up-and-coming artists or listeners interested in anything outside the top ten hits from the last 50 years. Giant radio conglomerates even use their outsized strength to squeeze the few artists who receive airplay. It is self-evident that loosening the number of stations owned in any given market, including the largest markets, would exacerbate the harms consolidation had caused to the public interest and to music creators.

Radio in America is broken. We urge the FCC to impose stricter ownership limits on the broadcast radio industry to reaffirm radio's commitment to the public interest.

[9] "NAB Files Petition to Deny XM/Sirius Merger," Press Release, July 9, 2007 at http://www.nab.org/documents/newsroom/pressRelease.asp?id=1400